IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2007

CORAM

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.R.C.No.1774 of 2004

Villalan .. Petitioner/ Accused

Versus

State rep by
Station House Officer,
Orleanpet Police Station,
Pondicherry.
(Cr.No.173/2000) .. Respondent/ Complainant

Prayer:- This revision petition has been preferred under Section 397 and 401 of Cr.P.C., against the judgment dated 20.10.2004 in C.A.No.9 of 2003 passed by the Principal Sessions Judge, Pondicherry.

For petitioner : Mr.R.Natarajan, Advocate

For respondent : Mr.M.R.Thangavelu,
Public Prosecutor (Pondicherry)

ORDER

The accused, who has faced the charge under Section 304(ii) IPC before the Assistant Sessions Judge, Pondicherry, is the revision petitioner herein.

2.The brief facts of the case of the prosecution relevant for deciding this revision petition are as follows:-

On 28.07.2000 at about 14.30 hours the accused in a heat of passion upon a sudden quarrel gave a blow on the face of the deceased Raji, S/o.Mani, which resulted in his death. Hence, the accused was charged for an offence of culpable homicide not amounting to murder [304 (ii) IPC].

3.The committal Magistrate had furnished copies to the accused under Section 207 of Cr.P.C. on his appearance on summons. Since the case is exclusively triable by the Court of sessions, the learned committal Magistrate had committed the case under Section 209 of Cr.P.C., to the court of Sessions. The learned Sessions Judge, on appearance of the accused before him had framed charge under Section 304(ii) IPC and when questioned the accused pleaded not guilty.

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Before the trial Court P.W.1 to P.W.10 were examined and Ex.P.1 to Ex.P.9 were marked.

4.P.W.1 is the brother of the deceased, who is an ocular witness to the occurrence. P.W.1 would depose that at the time of occurrence, the accused had assaulted his brother deceased Raji on the cheek and due to the impact his brother fell on the ground and sustained injuries on the head and breathed his last at the place of occurrence itself. After the occurrence he along with his brother's wife went to the police station and preferred Ex.P.1-complaint.

5.P.W.2 is the wife of the deceased. P.W.2 would admit that along with P.W.1 she had preferred Ex.P.1-complaint with the police after the occurrence.

6.P.W.3 also corroborated the evidence of P.W.1 to the fact that at the time of occurrence, the accused had assaulted the victim with hands on the cheek and that the victim fell down on the ground and sustained injuries. P.w.4 also corroborated the evidence of P.W.1 to P.W.3.

7.P.W.9 is the then Inspector of Police, who had registered the case in Cr.No.173 of 2000 under Section 304 IPC on the basis of the complaint preferred by P.W.1 under Ex.P.1. Ex.P.9 is the printed copy of FIR. He had visited the place of occurrence and arranged to take up photos through P.W.8-Kannan, Photographer. He has examined the witnesses and recorded their statements. He had conducted inquest on the corpse of the deceased and had sent the corpse for postmortem through PC.1652. P.W.9 would further depose that the accused surrendered before him on 31.07.2000 and he had arrested the accused immediately and produced him before the Judicial Magistrate for judicial custody.

8.P.W.10 is the successor of P.W.9, who had conducted further investigation. P.W.5 is the witness to Ex.P.2-observation mahazar. P.W.6 is a witness in Ex.P.3-inquest report. P.W.7 is the doctor, who had conducted postmortem on the corpse of the deceased and issued Ex.P.4 postmortem certificate. According to P.W.7-doctor, the death was caused due to internal hemorrhage. Ex.P.5 is the final opinion of the doctor and Ex.P.6 is the viscera report. P.W.10 after completing the formalities had filed the charge sheet on 19.2.2000 against the accused under Section 304(A) IPC.

9.When incriminating circumstances were put to the accused under Section 313 of Cr.P.C., he would deny his complicity with the crime. The learned trial Judge after going through the evidence both oral and documentary, has convicted the accused under Section 304(ii) IPC and sentenced him to undergo 4 years RI and slapped a fine of Rs.1000/- with default sentence. Aggrieved by the findings of the learned trial Judge, the accused preferred an appeal before the Principal Sessions Judge, Pondicherry in C.A.No.9 of 2003. The

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learned first Appellate Judge after scanning the evidence both oral and documentary and also after giving due deliberations to the submissions made by the learned counsel for the appellant as well as the learned Public Prosecutor, while confirming the conviction, has modified the sentence of the learned trial Judge by convicting the accused under Section 323 of IPC instead of under Section 304(ii) IPC, and sentenced him to undergo 4 months SI and to pay a fine of Rs.1000/-, which necessitated the accused to prefer this revision.

10.Heard Mr.R.Natarajan, the learned counsel appearing for the revision petitioner and Mr.M.R.Thangavelu, the learned Public Prosecutor (Crl. Side, Pondicherry) and considered their respective submissions.

11.When the revision was taken up for consideration, the learned counsel appearing for the revision petitioner would contend that he is not going to argue on the merits of the case but he will be confined only with regard to the sentence. The learned counsel would contend that the accused is a first offender and he was aged 43 years at the time of the occurrence and some leniency may be shown on the sentence.

12.Taking into consideration that the revision petitioner is a first offender and only due to the sudden passion he had assaulted the victim with hand causing simple injury, but unfortunately resulted in his death and he is working as Sentry in Jipmer Hospital and is a Central Government servant, I am of the view that the provision under Section 4(1) of the Probation of Offenders Act can be applied to the present facts of the case.

13.In fine, the revision petition is dismissed confirming the conviction of the accused under Section 323 IPC passed by the First Appellate Judge, but the sentence alone is modified and the accused is directed to be released on his executing a personal bond for a sum of Rs.5,000/- with one surety for the like sum to the satisfaction of the learned Trial Judge (Additional Assistant Sessions Judge, Pondicherry), with a condition that he shall appear before the Trial Court on every working day at 10.30 am for six months and with a further condition that he shall keep peace and good behavior during the said period and to appear to receive the sentence when called for during the said period. Fine amount, if any paid, shall be construed as costs in lieu of Section 5 of the Probation of Offenders Act.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

ssv

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To

1.The Principal Sessions Judge,
Pondicherry.

2.The Additional Assistant
Sessions Judge, Pondicherry.

3.The Public Prosecutor,
High Court, Madras.

4.The Judicial Magistrate No.II,
Pondicherry.

5.The Chief Judicial Magistrate,
Pondicherry.

6.The Superintendent of Central Prison,
Pondicherry.

7.The Station House Officer,
Orleanpet Police Station,
Pondicherry.

2 ccs to Mr.R. Natarajan, SR,. 64541
1 cc to Senior Public Prosecutor, Pondicherry, Sr. 64627

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MDR (CO)
kk 29/10

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